Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Message Text

CONFIDENTIAL

PAGE 01 STATE 169334

70
ORIGIN NEA-10

INFO OCT-01 ISO-00 DLOS-06 SAL-01 L-03 ACDA-07 AGR-05

AID-05 CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00

DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00

H-02 INR-07 INT-05 IO-13 JUSE-00 NSAE-00 NSC-05

NSF-01 OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15

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O 082146Z JUL 76
FM SECSTATE WASHDC
TO AMEMBASSY NEW DELHI IMMEDIATE

C O N F I D E N T I A L STATE 169334

E.O. 11652:GDS

TAGS: PLOS, IN

SUBJECT: LOS: AMBASSADOR LEARSON VISIT

REF: NEW DELHI 9883

1. IN ANTICIPATION OF AMBASSADOR LEARSON'S VISIT WE HAVE REVIEWED LOS FILE WHICH INDICATES THAT EMBASSY HAS RECEIVED MOST OF PERTINENT 1976 LOSDEL REPORTING AND IS GENERALLY FAMILIAR WITH GOI ROLE AND POSITIONS AND POINTS OF CONFLICT WITH US.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 169334

2. HOWEVER, THERE ARE SOME ASPECTS OF GOI POSITIONS WHICH

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

EMBASSY MAY NOT BE FULLY AWARE AS FOLLOWS:
A. SECURITY ASPECTS OF MARINE SCIENTIFIC RESEARCH. THE GOI HAS STRONGLY ADVOCATED THAT THE COASTAL STATE HAVE RIGHT TO PROHIBIT OR REQUIRE CESSATION OF RESEARCH IN THE ECONOMIC ZONE OR ON THE CONTINENTAL SHELF (ALTHOUGH PRIVATELY JAGOTA HAS STATED TO US THAT INDIA WOULD NOT INSIST UPON A CONSENT REGIME FOR RESEARCH ON THE MARGIN BEYOND 200-MILES) WHICH IT BELIEVES IS BEING CONDUCTED FOR OTHER THAN PEACEFUL PURPOSES AND THAT THE COASTAL STATE SHALL HAVE RIGHT TO REFUSE TO SUBMIT DIFFERENCES OF VIEW REGARDING THE NATURE OF THE PROJECT TO THE PROCEDURES FOR SETTLEMENT OF DISPUTES. THEY ARE SUPPORTED ON THIS SUBJECT BY BRAZIL AND KENYA.

THE U.S. STRENUOUSLY OPPOSES INDIA IN THIS RESPECT AND REFUSES TO ACCEPT SECURITY RELATED REASONS AS A BASIS FOR DENYING CONSENT. WE BELIEVE THAT MILITARY SECURITY MATTERS TRANSCEND LOS AND SHOULD NOT BE ADDRESSED. MOREOVER, WE BELIEVE THAT THE RSNT ON MSR IS TOO COASTAL STATE ORIENTED AND SPECIFICALLY OPPOSE AN OVERALL CONSENT REGIME. WE CAN SUPPORT AN APPROACH BASED ON ADVANCE NOTIFICATION, COASTAL STATE PARTICIPATION, ETC. COUPLED WITH CONSENT FOR RESEARCH BEARING SUBSTANTIALLY ON RESOURCES AND DRILLING IN THE ECONOMIC ZONE. FOR OTHER RESEARCH THE FLAG STATE'S OBLIGATIONS WOULD GOVERN.

B. THE HIGH SEAS STATUS OF THE ECONOMIC ZONE. THE U.S. HAS STRONGLY ADVOCATED THAT THE LEGAL STATUS OF THE ECONOMIC ZONE REMAIN HIGH SEAS WITHOUT PREJUDICE TO THE ENUMERATED RESOURCE AND OTHER RIGHTS OF COASTAL STATES. WE ARE SUPPORTED BY MOST DEVELOPED COUNTRIES, INCLUDING THE USSR, AND BY CERTAIN LESS DEVELOPED COUNTRIES, ESPE-CIALLY THE LAND-LOCKED AND "GEOGRAPHICALLY DISADVANTAGED." MOST OF THE DEVELOPING COUNTRIES INCLUDING INDIA, HAVE, HOWEVER, STRONGLY SUPPORTED THE POSITION THAT THE ECONOMIC ZONE IS NEITHER HIGH SEAS NOR TERRITORIAL SEAS, BUT IS SUI GENERIS. THERE IS NO DISAGREEMENT THAT THERE WOULD BE FREEDOM OF NAVIGATION, OVERFLIGHT, AND OTHER USES RELATED TO NAVIGATION AND COMMUNICATION IN THE ECONOMIC ZONE UNDER EITHER APPROACH AND THAT TRADITIONAL PROVISIONS OF HIGH SEAS LAW (E.G.,PIRACY) WOULD APPLY. HOWEVER, CONFIDENTIAL

MAINTAINING THE ECONOMIC ZONE AS HIGH SEAS WOULD STRENGTHEN OUR CASE THAT OTHER USES MAY ALSO BE CONDUCTED BY THE INTERNATIONAL COMMUNITY, WHEREAS THE SUI GENERIS APPROACH WOULD LEAVE THIS ISSUE OPEN. THE U.S. POSITION IS TO HAVE THE TEXT CLEARLY STATE THAT BEYOND THE TERRI-TORIAL SEA, HIGH SEAS PRIVILEGES ARE RETAINED BY THE INTERNATIONAL COMMUNITY. THUS, RESIDUAL RIGHTS REGAR-DING RESOURCES WOULD LIE WITH COASTAL STATE BUT OTHER RIGHT

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

REGARDING, FOR EXAMPLE, NATIONAL SECURITY, WOULD LIE WITH THE INTERNATIONAL COMMUNITY. MORE IMPORTANTLY, THE BROAD GRANT OF COASTAL STATE AUTHORITY IN THE ECONOMIC ZONE HAS THE POTENTIAL FOR EVOLVING OVER TIME INTO THE FUNCTIONAL EQUIVALENT OF A TERRITORIAL SEA. RETENTION OF THE HIGH SEA STATUS DIMINISHES THIS POSSIBILITY. THIS IS THE MOST IMPORTANT OUTSTANDING ISSUE TO THE U.S. IN COMMITTEE II.

C. ARTICLE 48--COASTAL STATE JURISDICTION OVER ARTIFICIAL ISLANDS, INSTALLATIONS, AND STRUCTURES. PARA 4--COMPETENCE TO ESTABLISH SAFETY ZONES AROUND ARTIFICIAL ISLANDS, ETC. AND TO ENSURE SAFETY OF ARTIFICIAL ISLANDS, ETC. AND NAVIGATION--INDIA MADE RADICAL PROPOSAL PROVIDING FOR A DRAMATIC EXTENSION OF COASTAL STATE JURISDICTION OVER INSTALLATIONS AND THE SAFETY ZONES SURROUNDING THEM IN THE ECONOMIC ZONE. HOWEVER, INDIA INDICATED THAT REASONABLE AMENDMENT TO THE TEXT MIGHT SATISFY THEM. THE U.S. STRONGLY OPPOSES THEIR AND SIMILAR AMENDMENTS. THE PRESENT TEXT REGARDING SAFETY ZONES REPRESENTS A REASONABLE BALANCE OF COASTAL STATE AND INTERNATIONAL INTERESTS.

D. DEVELOPMENT AND TRANSFER OF TECHNOLOGY--INDIA STATED THAT TECHNOLOGY TRANSFER ARTICLES MUST BE MORE FAVORABLE TO DEVELOPING THAN TO DEVELOPED COUNTRIES. LEGAL REGIME WHICH PERPETUATES "MONOPOLISTIC" PRACTICES AND PATENTS IS UNACCEPTABLE. THE INTERNATIONAL SEABED AUTHORITY SHOULD ACQUIRE TECHNOLOGY FROM DEVELOPED NATIONS AND EVERY NATION SHOULD HAVE RIGHT TO ACQUIRE TECHNOLOGY FROM AUTHORITY. MOREOVER, IN THEIR VIEW A CONSENT REGIME FOR RESEARCH IN THE ECONOMIC ZONE IS REQUIRED TO ASSURE THAT DEVELOPING STATES WOULD RECEIVE TECHNOLOGY TRANSFER. THE U.S. OPPOSES THE INDIAN POSITION AND CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 169334

MAINTAINS THAT THE TECHNOLOGY TRANSFER ARTICLES MUST BE GENERAL IN NATURE LEAVING ANY SPECIFIC COMMITMENTS TO BE DEVELOPED IN OTHER FORA.

E. CONTINENTAL SHELF--INDIA WITH A BROAD CONTINENTAL SHELF FAVORS A FORMULA WHICH WOULD GIVE THEM THE BULK OF THE "FAN" OFF THEIR COAST. THEY OPPOSE THE "BASE OF THE SLOPE PLUS 60 MILE" FORMULA WHICH IS PART OF THE IRISH-CANADA PROPOSAL. THE U.S. COULD SUPPORT THAT PROPOSAL WHICH CONTAINS THE ABOVE FORMULA PLUS A DEPTH OF SEDIMENT TEST IN THE ALTERNATIVE. WE BELIEVE THAT THIS SHOULD BE ADEQUATE TO SATISFY ANY REASONABLE INDIAN DEMANDS WHILE AT THE SAME TIME CONFINING TO REASONABLE LIMITS COASTAL STATE RIGHTS OVER THE SHELF.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

F. TERRITORIAL SEA--THE INDIANS HAVE ALSO STRENOUSLY ADVOCATED ADVANCED NOTIFICATION OR AUTHORITY FOR PASSAGE BY NUCLEAR POWERED VESSELS AND SUBMARINES THROUGH THE TERRITORIAL SEA. THIS IS VIGOROUSLY OPPOSED BY THE U.S.

3. ARCHIPELAGO ISSUE--SEPTEL HAS REVIEWED THIS. GOI POSITION REGARDING ARCHIPELAGOS BELONGING TO CONTINENTAL STATES IS OPPOSED BY U.S., THE ARCHIPELAGO STATES AND HAS LITTLE SUPPORT IN CONFERENCE. KISSINGER

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Margaret P. Grafeld
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EO Systematic Review
04 MAY 2006

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